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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

IN RE TWITTER, INC. SECURITIES LITIGATION

Case No.: 4:19-cv-07149-YGR

**DEFENDANTS' REPLY IN SUPPORT OF
MOTION TO DISMISS THE
CONSOLIDATED CLASS ACTION
COMPLAINT**

This Document Relates To:

ALL ACTIONS

Date: October 13, 2020

Date: October 1

Courtroom: 1

Hon: Yvonne Gonzalez Rogers

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Twitter is committed to protecting the privacy of the people who use its service. To that end, when Twitter discovered that particular account settings choices were affected by software bugs, causing certain data to be shared without account holders' permission, it promptly stopped sharing the data and informed both the people affected and the general public of the issue. While Plaintiffs try to contort Twitter's transparent and privacy-protective actions into securities fraud, Defendants' Opening Brief established that Plaintiffs' claims fail for several independent reasons, and Plaintiffs' Opposition does nothing to salvage their claims.

Critically, Plaintiffs fail to plead any false or misleading statement. The Opposition is a morass of factually unsupported theories and distorted interpretations of the challenged statements. None of these is an adequate substitute for what the Complaint lacks: well-pled facts establishing that any challenged statement was materially false or misleading at the time it was made.

Plaintiffs’ scienter arguments are even more flawed. Lacking any confidential witnesses who worked at Twitter during the Class Period, suspicious stock sales, or other typical bases for scienter arguments, Plaintiffs fall back on arguments about Twitter’s “core operations”—in other words, the MAP product was such a purportedly critical operation of Twitter that Defendants must have known about the bugs and their effect. But absent any well-pled facts even suggesting that Defendants actually knew about a revenue impact, this case simply does not present the type of extreme circumstances required to support a core operations theory.

Finally, Plaintiffs' bare reliance on disappointing earnings results is patently insufficient to allege loss causation. The Court should therefore dismiss the CAC¹ with prejudice.

II. ARGUMENT

A. Plaintiffs Have Not Pled A False Or Misleading Statement

¹ Unless otherwise defined, capitalized terms have the meanings set forth in the Consolidated Class Action Complaint (“CAC”) Dkt. No. 50 and Defendants’ Motion to Dismiss the Consolidated Class Action Complaint. Dkt. No. 53.

1 1. Statements 1-2: Statements in Q2 Shareholder Letter & Quarterly Report

2 The Opposition confirms that Plaintiffs have not established that the purportedly omitted
 3 information existed at the time of the July 26 Q2 2019 Shareholder Letter and July 31 Q2 2019
 4 Form 10-Q. Indeed, the CAC fails to include any facts suggesting that Defendants knew, as of
 5 July 2019, that the technical bugs even existed. Opp. 9-10; CAC ¶¶ 104-108; *see also Norfolk*
 6 *Cty. Ret. Sys. v. Solazyme, Inc.*, No. 15-cv-02938-HSG, 2016 WL 7475555, at *3 (N.D. Cal.
 7 Dec. 29, 2016) (dismissing 10(b) claim where “[t]he allegations omit contemporaneous facts that
 8 would establish a contradiction between the alleged materially misleading statements and
 9 reality”).

10 Plaintiffs instead speculate that the omitted facts must have existed at the time of the
 11 challenged July statements because those statements were made “*just 11 days*” before the August
 12 Tweet. Opp. at 9-10. However, Plaintiffs’ temporal-proximity argument is insufficient to
 13 satisfy Rule 9(b). *See Yourish v. California Amplifier*, 191 F.3d 983, 997 (9th Cir. 1999)
 14 (“temporal proximity . . . , without more, is insufficient to satisfy Rule 9(b)”). Plaintiffs fail to
 15 allege any particularized facts showing that Twitter had discovered and fixed the issue with
 16 users’ settings by the time of the July statements. The case law Plaintiffs cite only underscores
 17 their pleading failure. Opp. at 9 n.5. In each case, there was contemporaneous evidence
 18 showing that defendants already knew information that contradicted the challenged statements.
 19 *See Azar v. Yelp, Inc.*, No. No. 18-cv-00400-EMC, 2018 WL 6182756, at *11-12, 17-18 (N.D.
 20 Cal. Nov. 27, 2018) (defendant had stated that Yelp began addressing local advertising concern
 21 in January, a month before misleadingly reassuring investors about Yelp’s local advertising
 22 model); *Mississippi Pub. Emps.’ Ret. Sys. v. Boston Sci. Corp.*, 523 F.3d 75, 90-91 (1st Cir.
 23 2008) (company statements indicated that it had implemented changes to address a product
 24 defect while publicly maintaining that the product was not defective). By contrast, Plaintiffs do
 25 not and cannot point to any statement prior to the August 6 Tweet suggesting that Twitter had
 26 already discovered the bugs, let alone addressed the resulting user setting issues, delayed work
 27 on MAP, or incurred any revenue impact at all.

28

Indeed, the only “fact” supporting Plaintiffs’ temporal proximity argument is that it allegedly takes three to six months to fix “fundamental” software bugs, and Twitter purportedly stated in its August 6 Tweet that the bugs had already been fixed. Opp. at 9-10; CAC ¶ 82. But as discussed *infra*, the August 6 Tweet disclosed that Twitter had addressed user setting concerns arising from the bugs; it said nothing about whether Twitter had fixed the technical bugs. Indeed, Plaintiffs’ entire theory of the case is that Twitter had *not* fixed the technical bugs by the time of the Tweet, and instead had stopped sharing account holder data with advertisers (which impacted advertiser demand and revenue). Opp. at 12-13. Plaintiffs cannot have it both ways. See *Osher v. JNI Corp.*, 302 F. Supp. 2d 1145, 1159 (S.D. Cal. 2003) (courts need not accept contradictory allegations). Moreover, Plaintiffs’ “3 to 6 months” allegation is based solely on confidential witness allegations that are entitled to no weight. According to Plaintiffs, the sole confidential witness stopped working at Twitter before the Class Period even began, and the Complaint contains no facts specifying the confidential witness’s prior responsibilities at Twitter or how she/he can reliably opine about technical bugs affecting MAP after his/her work at Twitter ended. See, e.g., *McGovney v. Aerohive Networks, Inc.*, 367 F. Supp. 3d 1038, 1052-53 (N.D. Cal. 2019) (applying clear Ninth Circuit law requiring confidential witnesses to be “described with sufficient particularity to establish their reliability and personal knowledge”).

Mr. Segal’s post-Class Period statement that the technical bugs were discovered during Q3 2019 also does not support Plaintiffs’ temporal-proximity argument. CAC ¶ 91; Opp. at 9-10.² Identifying technical bugs *during* Q3 (July through September) is entirely consistent with identifying them *after* the July statements. Defendants made this timeline clear by explaining that, “when we discovered that [technical bug], one, we Tweeted about it [on August 6], which we often do to try to be transparent with people when things aren’t working as expected. And

² Plaintiffs’ cited cases are inapposite as none involved a situation like the one at issue here, where the alleged “admission” about the discovery of the bugs in Q3 is entirely consistent with Defendants’ discovery of the bugs after the late July 2019 statements. Opp. at 18 n.12 (citing *Azar*, 2018 WL 6182756, at *22 (February 2017 statements were misleading in light of issues “manifesting in late 2016 and early 2017”); *Flynn v. Sientra, Inc.*, No. CV 15-07548 SJO (RAOx), 2016 WL 3360676, at *14 (C.D. Cal. June 9, 2016) (registration statement was misleading in light of internal investigation “concluded weeks before” filing)).

1 two, we turned off the setting so that it would work as expected.” CAC ¶ 91.

2 Even if Plaintiffs had adequately alleged that the omitted facts existed at the time of the
 3 challenged July statements, those statements—that Twitter was “still in the middle” of and
 4 “continuing” work on an improved MAP product and “any positive revenue impact will be
 5 gradual”—were not misleading because they did not “affirmatively create an impression of a
 6 state of affairs that differ[ed] in a material way from the one that actually existed.” *In re Pivotal*
 7 *Sec. Litig.*, 3:19-cv-03589-CRB, 2020 WL 4193384, at *10 (N.D. Cal. July 21, 2020) (citation
 8 omitted). There is no suggestion in the Complaint (or reality) that Twitter had ceased work on
 9 MAP or incurred a material revenue impact by the time of the July statements. This case is a far
 10 cry from *Scheuneman v. Arena Pharm., Inc.* (Opp. at 12), where the defendants stated that “all”
 11 animal studies supported the safety of a new drug, even though one of those animal studies
 12 showed that the drug was potentially carcinogenic and defendants “knew that the animal studies
 13 were the sticking point with the FDA.” 840 F.3d 698, 708 (9th Cir. 2016).

14 Plaintiffs also quibble with the amount of progress Twitter had made on an improved
 15 MAP product. Opp. at 9; *see also* CAC ¶ 116 (alleging MAP work was “off track”). But they
 16 do not allege any deadline that Twitter missed (Opp. at 10-11), or any facts suggesting that
 17 Twitter was *not* “still in the middle of that work” (Opp. at 9). While Plaintiffs now assert that
 18 Twitter had already reallocated engineers to remediate the (undiscovered) software bugs, *id.*, the
 19 Complaint lacks a single factual allegation suggesting that the reallocation had occurred at the
 20 time of the July statements, or that any such reallocation had already caused a “material[]
 21 delay[].” Indeed, the Complaint contains no details whatsoever about the reallocation of
 22 engineers, including how many were reallocated and when. *See In re Silicon Graphics Inc. Sec.*
 23 *Litig.*, 183 F. 3d 970, 984-85 (9th Cir. 1999) (affirming dismissal where vague allegations
 24 invited court to “speculate” as to the “severity of the problems”).

25 Lastly, Plaintiffs argue that the PSLRA’s safe harbor does not protect Defendants’
 26 predictions about potential future revenues from an improved MAP product because Defendants
 27 had no reasonable basis for them, and because the statements are “inextricably intertwined with
 28 the present.” Opp. at 10-11. Neither argument has merit. First, Plaintiffs themselves allege that

1 an improved MAP product would have a positive revenue impact. *See, e.g.*, CAC ¶¶ 56-64.
 2 There is not a single factual allegation suggesting that at the time of the challenged revenue
 3 predictions Twitter did not believe that there *would be* an improved MAP product. Second,
 4 Twitter's statements about potential future revenues are textbook forward-looking statements.
 5 15 U.S.C. § 78u-5(i)(A) ("forward-looking statement" means . . . a projection of revenues . .
 6 ., or other financial items"). Courts routinely hold that the PSLRA's safe harbor protects
 7 forward-looking statements about revenue that necessarily have some relation to current events.
 8 *See, e.g.*, *Golub v. Gigamon Inc.*, 372 F. Supp. 3d 1033, 1048 (N.D. Cal. 2019) ("It strains logic
 9 to suggest that it is possible to make a forward looking statement that is not in at least some way
 10 based on a belief about the present state of things... The Updated Case C Projections are classic
 11 forward-looking statements because they pertain to revenues and other financial data").
 12 Plaintiffs' reliance on *In re Quality Sys. Inc. Sec. Litig.*, 865 F.3d 1130, 1141-42 (9th Cir. 2017),
 13 is misplaced. Opp. at 10. In that case, the Ninth Circuit identified statements like the revenue
 14 projections at issue here as forward-looking. 865 F.3d at 1142 (revenue projections are protected
 15 by the PSLRA safe harbor).

16 2. Statement 3: Risk Disclosures In Quarterly Report

17 Plaintiffs assert that risk disclosures in the Q2 2019 Form 10-Q warning that undetected
 18 software bugs "could harm our business and operating results" were false because software bugs
 19 had already been detected at the time. Opp. at 11-12. That is wrong. Plaintiffs do not allege
 20 with particularity that any software bugs had already been detected by the time of the Q2 2019
 21 Form 10-Q, let alone that those bugs had already impacted the business. *Supra* Section II.A.1.
 22 Courts have held that risk disclosures concerning business impacts are only misleading where the
 23 *business impact* has already materialized. *See In re Facebook, Inc. Sec. Litig.*, 405 F. Supp. 3d
 24 809, 841 (N.D. Cal. 2019) ("For a risk disclosure to be false, Plaintiffs must allege facts
 25 indicating that the risk factor was already affecting [the company] to the extent that Defendants'
 26 statements were false when made.") (citation omitted); *see also Williams v. Globus Med., Inc.*,
 27 869 F.3d 235, 242-43 (3d Cir. 2017) (affirming dismissal where plaintiffs "failed to adequately
 28

1 plead that the risk about which [defendant] warned—the risk of adverse effects on sales as a
 2 result of the loss of a single independent distributor—had actually materialized at the time”).

3 3. Statement 4: SOX Certifications in Quarterly Report

4 As set forth in Defendants’ Motion, because Plaintiffs fail to allege that the Q2 2019
 5 Form 10-Q contained any false and misleading statements, the SOX certifications are
 6 actionable. Mot. at 10-11. The Opposition does nothing to rebut this argument and, therefore,
 7 these SOX certifications cannot support a claim for securities fraud.

8 4. Statement 5: August 6, 2019 Tweet

9 Plaintiffs argue that Twitter’s August 6, 2019 Tweet concerning the privacy implications
 10 of the bugs was misleading because Defendants had not fixed the technical bugs, but rather had
 11 just stopped sharing user data with advertisers. Plaintiffs also argue that Twitter did not disclose
 12 that its decision to stop sharing user data had caused a purportedly immediate and material
 13 reduction in advertising demand. Opp. at 12. Plaintiffs’ arguments fail.

14 Plaintiffs do not contest that, by August 6, Twitter had addressed user setting concerns
 15 related to the bugs by simply turning off the capability to share certain user data. CAC ¶¶ 81-88.
 16 Indeed, they cite Mr. Segal’s statement to that effect. *See id.* ¶ 91. Instead, Plaintiffs strain the
 17 meaning of the Tweet as conveying that the technical bugs themselves had been fixed. Opp. at
 18 12. That is far from what the Tweet’s plain language and context conveyed, and is not an
 19 impression affirmatively created by the Tweet. *See Brody v. Transitional Hosp. Corp.*, 280 F.3d
 20 997, 1006 (9th Cir. 2002). The Tweet—and the accompanying Help Center disclosure—was
 21 directed to users; it stated that Twitter had discovered issues with users’ settings about data
 22 sharing that raised concerns, and that *the issues with users’ settings* had been fixed. Ex. 2; Ex. 3.
 23 The disclosures did not indicate that anything beyond the user setting issue had been fixed. *See*
 24 *In re Rigel Pharm., Inc. Sec. Litig.*, 697 F.3d 869, 881 (9th Cir. 2012) (disclosure reporting
 25 results of clinical trial was not misleading even though it omitted adverse facts because “the
 26 subsequent release of more extensive information” was “not inconsistent with the results that
 27 originally were reported”); *Irving Firemen’s Relief & Ret. Fund v. Uber Techs.*, No. 17-cv-
 28 05558-HSG, 2018 WL 4181954, at *5 (N.D. Cal. Aug. 31, 2018) (finding no falsity where

1 statement did not “affirmatively le[a]d [investors] in a wrong direction (rather than merely
 2 omitted to discuss certain matters)” (citation omitted).

3 The August 6 Tweet (and Help Center disclosure) likewise did not mislead investors
 4 about any purportedly material impact on advertiser spending. To begin with, the Opposition
 5 implausibly contends that less than one day after Twitter stopped sharing user data, there was an
 6 immediate “material decline” in advertising demand. Opp. at 12-13 (citing CAC ¶¶ 84-86). The
 7 Complaint contains no such allegations. CAC ¶¶ 84-86; *McGovney*, 367 F. Supp. 3d at 1059
 8 (falsity allegations were legally insufficient where they lacked specifics regarding the severity of
 9 the revenue impact). But even if there had been an immediate decline, the Tweet—which was
 10 directed at users, not investors—did not “affirmatively broach” the topic of advertising spending.
 11 *In re Apple Inc. Sec. Litig.*, No. 19-cv-02033-YGR, 2020 WL 2857397, at *17 (N.D. Cal. June 2,
 12 2020) (considering context of statements and finding disclosures not misleading where they did
 13 not “affirmatively broach[] any topic to make the lack of additional disclosure misleading”); *see also*
 14 *Uber Techs.*, 2018 WL 4181954, at *5. Contrary to Plaintiffs’ suggestion, this is not a
 15 question of materiality (Opp. at 13-14); rather, the issue is whether the August 6 Tweet was
 16 *misleading* about revenues. *Rigel*, 697 F.3d at 880 n.8 (“The materiality of information is
 17 different from the issue of whether a statement is false or misleading.”). Lastly, to the extent
 18 Plaintiffs are complaining that the Tweet failed to disclose a potential *future* revenue impact,
 19 Twitter had already disclosed exactly that risk in its 10-Q risk disclosure. Mot. at 12.

20 5. Statements 6-7: Mr. Segal’s Statements at September 4 Citi Conference

21 **Statement That MAP Work Is Ongoing.** Plaintiffs again complain about statements that
 22 Twitter’s MAP work was still continuing, pointing this time to Mr. Segal’s statements that
 23 “MAP work is ongoing” and “[w]e’ve continued to sell the existing MAP product but people
 24 know that new one is coming, and we haven’t really talked about a timeline around it.” Ex. 7 at
 25 7; *see also* Opp. at 14; CAC ¶ 115. They claim these statements were materially misleading
 26 absent disclosure that “current sales of MAP ads had been materially declining.” Not so.

27 “Falsity is alleged when a plaintiff points to defendant’s statements that directly
 28 contradict what the defendant knew at that time.” *Khoja v. Orexigen Therapeutics, Inc.*, 899

1 F.3d 988, 1008 (9th Cir. 2018). Again, the Complaint lacks any allegation that Defendants knew
 2 that MAP sales were materially declining at the time of the September 4 statement. Plaintiffs
 3 allege only (and without sufficient factual support) that Defendants monitored the CPE metric,
 4 which measured demand for advertising *products* and *not* just MAP. Mot. at 13; CAC ¶ 116. A
 5 metric about products in general does not directly contradict any statement about just one of
 6 those products specifically. Mot. at 13. Moreover, the Complaint contains no specific
 7 allegations about what the CPE metric even revealed as of September 4—a fatal failure under the
 8 PSLRA and Rule 9(b). *See id.*; *McGovney*, 367 F. Supp. 3d at 1059.

9 Lacking an answer for these deficiencies, Plaintiffs insist that the Court may not evaluate
 10 the adequacy of their pleading because the question involves materiality. Opp. at 15. Plaintiffs
 11 are wrong. Falsity is plainly an issue appropriate at the motion to dismiss stage. *See Khoja*, 899
 12 F.3d at 1008; *Rigel*, 697 F.3d at 880 n.8. Here, Plaintiffs have failed to allege that Defendants
 13 had knowledge of an omitted fact concerning revenues that directly contradicts the statement,
 14 and therefore have failed to plead falsity. *Id.* And even as to materiality, Plaintiffs must at least
 15 include allegations that any revenue impact from the MAP bugs was material at the time of the
 16 September 4 statement, yet all they do is point to the CPE metric and the decline of three points
 17 for the entire third quarter—there are no allegations about the MAP decline as of September 4.
 18 Mot. at 14; *see also* Opp. at 18 n.12.

19 ***Historical Tendency Of Asia To Be More MAP-focused.*** According to Plaintiffs, the
 20 comment by Mr. Segal that “Asia, for example, has tended to be more MAP-focused
 21 historically” was materially misleading because it was made in response to a question asking
 22 “why the particular strength in monetization outside the US.” Ex. 7 at 9. Plaintiffs claim the
 23 response “suggest[ed] that the Asian market for MAP thrived at the time” when it did not. Opp.
 24 at 15. Plaintiffs’ distorted interpretation is unsupportable. The general comment, stated in the
 25 past tense about what occurred “historically,” did not affirmatively create an impression that
 26 MAP was “thriving” at the time. *Uber Techs.*, 2018 WL 4181954, at *5. Furthermore, while
 27 Plaintiffs argue that MAP was “struggling in Asia,” they fail to plead any contemporaneous facts
 28

1 showing such a supposed struggle had occurred as of September 4, 2019, and certainly fail to
 2 plead contemporaneous awareness by Mr. Segal. *See infra* Section III.B.

3 **B. Plaintiffs Fail Adequately to Plead Scienter**

4 Unable to plead scienter directly, Plaintiffs attempt to plead scienter through a “core
 5 operations” theory and minimal stock sales by Mr. Segal. They cannot do so. *See In re Apple*,
 6 2020 WL 2857397, at *24 (core operations theory of scienter requires allegations of “actual
 7 access to the disputed information” or the prominence of the relevant fact to the corporation).

8 1. Plaintiffs’ Core Operations Theory Fails

9 Establishing a core operations theory is not easy. *See Police Ret. Sys. of St. Louis v.*
 10 *Intuitive Surgical, Inc.*, 759 F.3d 1051, 1062 (9th Cir. 2014). “A plaintiff [seeking to invoke the
 11 core operations doctrine] must produce either specific admissions by one or more corporate
 12 executives of detailed involvement in the minutia of a company’s operations, such as data
 13 monitoring . . . or witness accounts demonstrating that executives had actual involvement in
 14 creating false reports.” *Id.* (citation omitted); *see also In re Apple*, 2020 WL 2857397, at *24.
 15 Plaintiffs utterly fail to satisfy these requirements.

16 a. Metrics Allegations Do Not Support Scienter

17 **Key Metrics Emails.** The Opposition confirms that the Complaint contains no specific
 18 allegations that an Individual Defendant received, or even monitored, any MAP data—let alone
 19 MAP data that was inconsistent with a challenged statement. Opp. at 16-18. Instead, Plaintiffs
 20 assert that Mr. Dorsey and Mr. Segal reviewed different data, the CPE metric, and that a
 21 declining performance of MAP would have been reflected in the CPE metric. Opp. at 16-17.

22 Plaintiffs’ CPE argument does not support any inference of scienter. To begin with, the
 23 Complaint does not adequately allege that either Individual Defendant actually reviewed CPE.
 24 The Opposition concedes that the source underlying Plaintiffs’ CPE allegation (interrogatory
 25 responses from a prior litigation) described only a seven-month period *nearly five years ago*, and
 26 in any event does not state that either Individual Defendant actually received the CPE metric.
 27 Mot. at 17. Indeed, the allegation does not even apply to Mr. Segal, who was not employed by
 28 Twitter during that time period. While pre-class period awareness of relevant events may in

1 some circumstances inform a scienter analysis, courts require a more direct and close connection
 2 than the nearly five-year gap here. *See, e.g., Zucco Partners, LLC, v. Digimarc Corp.*, 552 F.3d
 3 981, 996 (9th Cir. 2009) (noting that witnesses “were not employed by Digimarc during the time
 4 period in question and have only secondhand information about accounting practices at the
 5 corporation during that year”).³

6 Further, the Complaint does not allege a single fact about what the CPE metric showed at
 7 the time of the challenged statements. While Plaintiffs argue that Individual Defendants would
 8 have known that a decline in CPE was caused by the user setting “fix” (Opp. at 19), they skip the
 9 first step: the Complaint lacks any factual allegations showing that the CPE metric *had already*
 10 *declined* (thus showing any revenue decline) by the time of any of the statements at issue. Still
 11 more problematic, even if Plaintiffs had alleged the purported decline and its timing, the
 12 Complaint contains no facts showing what could be inferred from a *CPE* decline about *MAP*
 13 *revenues*. Plaintiffs admit that the CPE metric concerns a myriad of advertising products, not
 14 just MAP. Opp. at 3, 17; *see also* Mot. at 4; Ex. 1 at 54 (CPE tracks cost per ad engagement,
 15 defined as user interaction with any of Twitter’s pay-for-performance advertising products).
 16 There are no factual allegations about a relationship between CPE and MAP that show that an
 17 Individual Defendant would have been aware that any decline in CPE was tied to MAP.

18 Plaintiffs cite no case where scienter was adequately pled that involved facts even
 19 remotely analogous to those here. Opp. at 17 n.11 (citing, for example, *In re Quality Sys.*, 865
 20 F.3d at 1145). Nor could they. A cogent and compelling inference of scienter cannot be based
 21 on such an invitation for speculation about what information Individual Defendants purportedly
 22 had at the time of the challenged statements. *See Lipton v. Pathogenesis Corp.*, 284 F.3d 1027,
 23 1036 (9th Cir. 2002) (scienter allegations were insufficient where plaintiffs did not provide

24
 25 ³ Plaintiffs’ own cases demonstrate this principle. Opp. at 19 (citing *In re Quality Sys.*, 865 F.3d
 26 at 1145 (COO’s allegations supported scienter where officer had personal knowledge of the
 27 individual defendants’ access to specific reports and their contents and had conversations with a
 28 defendant based on the reports); *Rihn v. Acadia Pharm. Inc.*, No. 15-cv-00575 BTM(DHB),
 2016 WL 5076147, at *9 (S.D. Cal. Sept. 19, 2016) (inferring knowledge from statements *during*
the class period); *Zelman v. JDS Uniphase Corp.*, 376 F. Supp. 2d 956, 970 (N.D. Cal. 2005)
 (events from the *months* immediately preceding the class period were relevant to the
 “contemporaneous state of mind” of the speakers)).

1 specific allegations about what data revealed). Contrary to Plaintiffs' suggestion (Opp. at 20),
 2 the Ninth Circuit has not abandoned the requirement of specificity for internal information. *See*
 3 *In re Vantive Corp. Sec. Litig.*, 283 F.3d 1079, 1087-88 (9th Cir. 2002) (no scienter where no
 4 pleading of "corroborating details" of reports, including "their contents").⁴

5 Tellingly, Plaintiffs run away from the CPE metric, and assert that "Defendants
 6 monitored numerous MAP-related metrics." Opp. at 19 (citing CAC ¶¶ 59-61). But here too,
 7 the Complaint contains no particularized facts indicating that any Individual Defendant reviewed
 8 any of those unspecified metrics, what those metrics were, or what they showed and when. *Id.*

9 ***Continuing MAP Work.*** Plaintiffs assert that because the Individual Defendants made
 10 general statements about continuing work on MAP, they must have known that such work had
 11 "been significantly interrupted." Opp. at 20-21. Again, Plaintiffs have failed to allege
 12 adequately that such a delay even occurred. In any event, that Defendants omitted comment
 13 about a delay from an unspecific statement that MAP work is "still continuing" is not such an
 14 "extreme departure from the standards of ordinary care" that the Individual Defendants knew or
 15 must have known that the omission would mislead, especially where they never expressed a
 16 timeline or schedule for that work. *See Zucco*, 552 F.3d at 991 (holding that a plaintiff must
 17 allege specific facts showing "a danger of misleading buyers or sellers that is either known to the
 18 defendant or is so obvious that the actor must have been aware of it") (citation omitted).

19 b. The Importance of Advertising Does Not Support Scienter

20 Plaintiffs further attempt to invoke the core operations theory by arguing that the
 21 software bugs affected Twitter advertising products other than MAP, and therefore affected
 22 Defendants' core advertising business. Opp. at 22. But Plaintiffs fail to specify any particular
 23 advertising product beside MAP that was purportedly affected by the bugs, and instead
 24 generically assert that they impacted Twitter's other pay-for-performance or targeted ad

25
 26 ⁴ Plaintiffs' cases are inapposite. Opp. at 20 (citing *In re Intuitive Surgical Sec. Litig.*, No. 5:13-
 27 cv-01920-EJD, 2014 WL 7146215, at *5 (N.D. Cal. Dec. 15, 2014) (defendants recited relevant
 28 internal information directly to CW); *Robb v. Fitbit Inc.*, No. 16-cv-00151-SI, 2017 WL 219673,
 described reports' contents)).

1 products. Opp. at 22. Unspecific allegations that an issue affected a company's core business
 2 are insufficient to establish scienter. *See, e.g., In re Apple*, 2020 WL 2857397, at *24
 3 (allegations about throttling iPhone and iPhone's importance to Apple were insufficient to
 4 establish scienter). Lacking particularized allegations, Plaintiffs were required, but failed, to
 5 demonstrate that this is one of the "rare circumstance[s]" where a business impact may be held to
 6 establish scienter. *Intuitive Surgical*, 759 F.3d at 1063. The revenue impact here does not come
 7 close to the "absurd" levels required for such a showing. *Id.*

8 Plaintiffs concede that declarant Mr. Neirenberg's analysis from 2015 at most shows "the
 9 importance of MAP revenue to Twitter in the time leading up to the Class Period." Opp. at 21.
 10 While Plaintiffs insist that these allegations provide "insight" into the relevant time period,
 11 Plaintiffs must allege facts supporting a devastating revenue impact sufficient to imply scienter.
 12 *Luna v. Marvell Tech. Grp. Ltd.*, No. 15-cv-05447-RMW, 2016 WL 5930655, at *12 (N.D. Cal.
 13 Oct. 12, 2016) ("The premature recognition of 7-8% of revenue cannot plausibly be described as
 14 'core' to [defendants'] operations."). They have not. While Plaintiffs assert that the MAP issues
 15 were associated with a \$65 million revenue impact in full year 2019 (Opp. at 22), that argument
 16 only highlights their failure to allege the sort of devastating impact necessary to invoke the core
 17 operations theory. Plaintiffs cite *Berson v. Applied Signal Tech., Inc.*, where the Ninth Circuit
 18 found that stop-work orders that imposed a revenue decline of approximately 80% created an
 19 inference of scienter. 527 F.3d at 988 n.5. By contrast, Twitter reported total revenues of
 20 \$3,042,359,000 in 2018; thus, a \$65 million revenue impact amounted to less than 2.2% of total
 21 revenue. *See* Ex. 1 at 46. Plaintiffs claim that evaluating the revenue impact is improper here
 22 (Opp. at 22), but numerous courts grant motions to dismiss based on Plaintiffs' failure to
 23 adequately plead the revenue impact sufficient for a core operations theory of scienter. *See*
 24 *Lloyd v. CVB Fin. Corp.*, No. CV 10-06256 MMM (PJWx), 2012 WL 12883517, at *6 (C.D.
 25 Cal. Aug. 21, 2012) (2.5% revenue hit was insufficient to establish scienter).

26 c. Twitter's Commitment to User Privacy Does Not Support Scienter

27 Nor do Plaintiffs' allegations about the importance to Twitter of its users' privacy support
 28 an inference of scienter. Plaintiffs argue that because Twitter publicly committed to safeguard

1 users' privacy, and entered into a consent decree with the FTC along the same lines, the
 2 Individual Defendants "should have known of the Company's privacy violations and MAP-
 3 related software issues." Opp. at 23. Tellingly, Plaintiffs completely ignore recent case law
 4 cited in Defendants' motion that rejected Plaintiffs' argument. *In re Facebook, Inc. Sec. Litig.*,
 5 405 F. Supp. 3d at 849 (rejecting allegation that FTC Decree was sufficient to establish scienter
 6 where plaintiffs alleged that it "put 'Facebook on notice' that 'its representations concerning its
 7 privacy practice needed to be completely accurate'"). Plaintiffs' own case law is inapposite, as
 8 there, the individual defendant "received reports that contained detailed statistics about stale
 9 alerts" and "admitted that she was working to fix the stale alert problem," in addition to the FTC
 10 consent decree. Opp. at 23 (citing *Oklahoma Police Pension & Ret. Sys. v. LifeLock, Inc.*, 780 F.
 11 App'x 480, 484-85 (9th Cir. 2019)). Additionally, Plaintiffs' attempt to chastise Defendants for
 12 attempting to comply with an FTC consent decree fails to link any knowledge of user setting
 13 issues to knowledge of a material revenue effect. And finally, Plaintiffs' allegation that the
 14 August 6 Tweet itself was false and misleading (Opp. at 24) does nothing to contradict the fact
 15 that Twitter's voluntary disclosure of the negative information about which Plaintiffs complain
 16 weighs against a finding of scienter. See *In re Rigel*, 697 F.3d at 885.

17 2. Mr. Segal's 10b5-1 Stock Sales Do Not Support Scienter

18 Plaintiffs also wrongly assert that Mr. Segal's sale of 10% of his unrestricted Twitter
 19 shares supports an inference of scienter, even though such sales were made pursuant to a Rule
 20 10b5-1 plan. Opp. at 23. The Complaint lacks any factual allegations to satisfy Plaintiffs'
 21 burden of showing that those sales were "dramatically out of line with prior trading practices, at
 22 times calculated to maximize the personal benefit from undisclosed inside information."
 23 *Ronconi v. Larkin*, 253 F.3d 423, 435 (9th Cir. 2001) (citation omitted); see also *In re Apple*,
 24 2020 WL 2857397, at *21. Moreover, Plaintiffs do not allege that Mr. Dorsey sold any shares
 25 during the Class Period, and allegations of stock sales by one defendant do not support a strong
 26 inference of scienter "where the rest of the equally knowledgeable insiders act in a way
 27 inconsistent with the inference that the favorable characterizations of the company's affairs were
 28 known to be false when made." *Ronconi*, 253 F.3d at 436; see also *In re Ditech Comms. Corp.*

1 *Sec. Litig.*, No. C 05-02406 JSW, 2006 WL 2319784, at *8 (N.D. Cal. Aug. 10, 2006). In any
2 event, sales of 10% of Mr. Segal’s unrestricted shares are insufficient to establish scienter. *See*
3 *Fadia v. FireEye, Inc.*, No. 5:14-cv-05204-EJD, 2016 WL 6679806, at *15 (N.D. Cal. Nov. 14,
4 2016) (addressing sales of 17.6%, 8.7%, and 15% of Defendants’ total stock holdings, “courts
5 have held that higher percentages of stock sales failed to raise a strong inference of scienter”).

3. Plaintiffs' Reference to Corporate Scienter Is Insufficient

7 While Plaintiffs assert that Twitter had constructive knowledge of all facts known by the
8 Individual Defendants and “senior officers” (Opp. at 24), the Ninth Circuit has not adopted the
9 corporate scienter doctrine, and Plaintiffs have not alleged a “dramatic[]” falsehood that would
10 warrant its application. *See In re NVIDIA Corp. Sec. Litig.*, 768 F.3d 1046, 1063 (9th Cir. 2014).

4. Plaintiffs' Allegations Taken as a Whole Do Not Support Scienter

Plaintiffs’ failure to plead scienter is readily apparent when the Complaint’s allegations are considered holistically. “A court must compare the malicious and innocent inferences cognizable from the facts pled in the complaint, and only allow the complaint to survive a motion to dismiss if the malicious inference is at least as compelling as any opposing innocent inference.” *Zucco*, 552 F.3d at 991. In sum, Plaintiffs’ theory is that Defendants voluntarily, promptly, and publicly addressed a software bug impacting users’ privacy by ceasing to disclose certain user information and then lied to investors to conceal an immediate material effect on revenue, only to then disclose a revenue impact at the end of the fiscal reporting period. This theory is far from cogent and compelling. As courts recognize, “a short respite from an inevitable day of reckoning does not demonstrate scienter.” *Gross v. GFI Grp., Inc.*, 310 F. Supp. 3d 384, 395 (S.D.N.Y. 2018). This Court does not have to “check [its] disbelief at the door.” *Nguyen v. Endologix, Inc.*, 962 F.3d 405, 415 (9th Cir. 2020). The more cogent inference is that Twitter promptly announced the user setting issue to its users without predicting what effect its privacy-promoting fix would have on MAP revenue in the third quarter—which effect, in fact, ended up being minimal.

Plaintiffs' failure to plead a strong inference of scienter is even more glaring when the Complaint's allegations are considered alongside the facts and inferences weighing against

1 scienter: (i) Defendants voluntarily disclosed their pro-privacy fix, as well as the effect on
 2 revenue, *see, e.g.*, *Rigel*, 697 F.3d at 885; (ii) prior to the allegedly misleading statements,
 3 Twitter disclosed to the market, in detail, the precise risk that undetected software bugs “could
 4 harm our business and operating results,” *City of Roseville Emps.’ Ret. Sys. v. Sterling Fin.*
 5 *Corp.*, 963 F. Supp. 2d 1092, 1142 (E.D. Wash. 2013) (“disclosure of risks and problems further
 6 ‘negates an inference that the company acted with intent to defraud’”) (citation omitted); and (iii)
 7 Plaintiffs do not allege that Mr. Dorsey sold stock, and as discussed above, Mr. Segal’s sales do
 8 not support scienter, *Bodri v. GoPro, Inc.*, 252 F. Supp. 3d 912, 933 (N.D. Cal. 2017) (“While
 9 ‘the absence of a motive allegation is not fatal,’ it may significantly undermine a plaintiff’s
 10 theory of fraud.”) (citation omitted); *Webb v. SolarCity Corp.*, 884 F.3d 844, 856 (9th Cir. 2018)
 11 (recognizing that “a lack of stock sales can detract from a scienter finding”).

12 C. Plaintiffs Have Not Pled Loss Causation

13 In response to Defendants’ arguments that Plaintiffs cannot plead loss causation, Mot. at
 14 22-33, Plaintiffs point only to stock reaction following the announcement of Q2 2019 results.
 15 Opp. at 24-25. But such vague allegations concerning reactions to Twitter’s announcement of
 16 quarterly results are insufficient to allege loss causation. *See, e.g., Loos v. Immersion Corp.*, 762
 17 F.3d 880, 887-89 (9th Cir. 2014) (disappointing earnings were insufficient to establish loss
 18 causation where the earnings results did not “reveal any information from which revenue
 19 accounting fraud might reasonably be inferred”); *Metzler Inv. GMBH v. Corinthian Colleges,*
 20 *Inc.*, 540 F.3d 1049, 1064 (9th Cir. 2008) (“So long as there is a drop in a stock’s price, a
 21 plaintiff will always be able to contend that the market ‘understood’ a defendant’s statement
 22 precipitating a loss as a coded message revealing the fraud.”).

23 D. Plaintiffs Have Not Pled a Control Claim

24 As Plaintiffs have failed to state an underlying primary violation, their Section 20(a)
 25 claim should also be dismissed. *Lipton*, 284 F.3d at 1035 n.15.

26 III. CONCLUSION

27 For these reasons, Defendants respectfully request that the Complaint be dismissed with
 28 prejudice.

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